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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

HOOTAN MELAMED (1),
JEAN FRANCOIS PICARD (2),
JOHN PANGELINAN (3),
PHONG HUNG TRAN (4),

Defendants.

No. 16CR1409-H

JOINT MOTION TO (1) CONTINUE
MOTION HEARING AND (2)
EXCLUDE TIME UNDER THE
SPEEDY TRIAL ACT

Date: August 28th, 2017
Time: 2:00 p.m.

The captioned parties jointly move to continue the motion hearing currently set for August 28th, 2017 at 2:00 p.m. to November 20th, 2017 at 2:00 p.m., and to exclude time under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7). In support, the parties submit as follows:

1. On June 16, 2016, a federal grand jury returned a 14-count indictment charging the defendants with conspiracy, honest services mail fraud, violations of the Travel Act, and criminal forfeiture, in connection with an alleged \$34 million kickback and bribery scheme through which service providers paid bribes and kickbacks to doctors to write prescriptions for compound creams or make referrals for durable medical equipment, and then to submit them to specific pharmacies and companies to be filled.

1 2. The defendants made their initial appearances and were arraigned on the
2 indictment in the Southern District of California on June 28, 2016. The Speedy Trial Act,
3 18 U.S.C. § 3161(c)(1), requires trial to commence within 70 days from that date.
4 Section 3161(h) excludes certain periods of time in calculating the 70 days, including
5 delay resulting from a continuance if the court finds “the ends of justice served by taking
6 such action outweigh the best interest of the public and the defendant in a speedy trial.”
7 18 U.S.C. § 3161(h)(7)(A). The court must “set[] forth . . . either orally or in writing, its
8 reasons” for the finding. Id. The court “shall consider” the following factors, “among
9 others”:

10 (i) Whether the failure to grant such a continuance in the proceeding
11 would be likely to make a continuation of such proceeding impossible, or
12 result in a miscarriage of justice.

13 (ii) Whether the case is so unusual or so complex, due to the number of
14 defendants, the nature of the prosecution, or the existence of novel
15 questions of fact or law, that it is unreasonable to expect adequate
16 preparation for pretrial proceedings or for the trial itself within the time
17 limits established by this section.

18 . . .

19 (iv) Whether the failure to grant such a continuance in a case which,
20 taken as a whole, is not so unusual or so complex as to fall within clause
21 (ii), would deny the defendant reasonable time to obtain counsel, would
22 unreasonably deny the defendant or the Government continuity of
23 counsel, or would deny counsel for the defendant or the attorney for the
24 Government the reasonable time necessary for effective preparation,
25 taking into account the existence of due diligence.

26 U.S.C. § 3161(h)(7)(B). “No continuance under [this provision] shall be granted because
27 of general congestion of the court’s calendar, or lack of diligent preparation or failure to
28 obtain available witnesses on the part of the attorney for the Government.” U.S.C. §
3161(h)(7)(C).

1 3. The parties agree that the ends of justice served by granting the requested
2 continuance outweigh the best interest of the public and the defendants in a speedy trial,
3 for the following reasons:

1 a. According to the indictment, the alleged scheme involved years' worth of
2 medical treatments, millions of dollars in bills, thousands of dollars in corrupt
3 payments, and hundreds of patients.

4 b. Because the claims involve patient identities, medical treatment, and
5 billing records, the discovery in this case is sensitive. The Court issued a
6 protective order on July 18, 2016.

7 c. The discovery consists of thousands of pages of bank records, agent
8 reports, and subpoenaed documents, as well as hundreds of audio recordings
9 ranging in duration from a few minutes to over an hour.

10 d. Given the volume of discovery and the need to protect and limit its
11 disclosure, the defense needs time to review the material before they can file and
12 litigate pretrial motions and provide an estimate of trial length.

13 e. To assist the parties in evaluating the discovery, the United States has
14 offered to meet with defense counsel. Those meetings are being scheduled and
15 have not yet occurred.

16 4. Accordingly, the parties request a continuance of the motion hearing until
17 August 28, 2017.

18 5. The parties have exercised due diligence. The parties submit that the
19 amount of discovery and the nature of the charges make it unreasonable to expect
20 adequate preparation for pretrial proceedings or the trial itself within the time limits
21 established by the Speedy Trial Act. The parties further submit that the failure to grant
22 the requested continuance would deny counsel the reasonable time necessary for effective
23 preparation and result in a miscarriage of justice.

24 6. Defendants are all currently out of custody.

25 7. Counsel for defendants represent that they have discussed the need for this
26 continuance with their respective clients, and that each defendant agrees to and joins in
27 the request for this continuance.
28

8. The parties therefore jointly move for a continuance and to exclude time under the Speedy Trial Act. The parties agree the period of delay excluded spans from the filing of this joint motion until the new date for the hearing pursuant to U.S.C. § 3161(h)(1)(D) and (h)(7)(A); specifically, that the time between August 28, 2017 and November 20th, 2017 shall be excluded.

SO STIPLUATED AND AGREED.

DATED: August 23, 2017 ALANA ROBINSON
Acting United States Attorney

s/ Valerie H. Chu
VALERIE H. CHU
Assistant United States Attorney

s/Steven Goldsobel (w/authorization)
STEVEN GOLDSOBEL
Counsel for Hootan Melamed (Def 1)

s/GERALD Werksman (w/authorization)
GERALD WERKSMAN
Counsel for Jean Francois Picard (Def 2)

s/Patrick Q. Hall (w/authorization)
PATRICK Q. HALL
Counsel for John Pangelinan (Def 3)

s/Thomas Warwick (w/authorization)
THOMAS WARWICK
Counsel for Phong Tran (Def 4)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	No. 16cr1409-H
Plaintiff,)	CERTIFICATE OF SERVICE
v.)	
HOOTAN MELAMED (1),)	
JEAN FRANCOIS PICARD (2),)	
JOHN PANGELINAN (3),)	
PHONG HUNG TRAN (4),)	
Defendants.)	

IT IS HEREBY CERTIFIED THAT:

I, Valerie H Chu, am a citizen of the United States and am at least 18 years of age. My business address is 880 Front Street, San Diego, California 92101-8893.

I am not a party to this case. I have caused service of the attached Joint Motion on the parties to this case by filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 23rd, 2017

s/ Valerie H. Chu
VALERIE H. CHU